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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,809	04/30/2001	Jean-Luc Taurel	109419	9965

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OLIFF & BERRIDGE, PLC  
P.O. BOX 19928  
ALEXANDRIA, VA 22320

EXAMINER

CHAMBERS, A MICHAEL

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/843,809

Applicant(s)

TAUREL ET AL.

Examiner

A. Michael Chambers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,9-30 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-30 and 32-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

1. This action is in response to a request for reconsideration filed January 10, 2005. remarks in that request have been considered. Claim 31 has been canceled as requested in the amendment after final filed December 8, 2004. Claims 32-34 have been added. Claims 1-6, 9-30 and 32-34 are pending.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 9-26 and newly added claims 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by the previously cited patent to Shibao. In their previous remarks and the interview on March 5, 2004, applicants stated that the previously applied patents to Umetsu et al and Kimura et al and the do not show "...an integrally molded pump compartment (to one of the two tank portions) which comprise the tank..." and the "...pump is not entirely within the shell of the tank.". Such recitation was previously included in the independent claim 1 and deleted by an amendment filed June 24, 2004. With regard to that deleted limitation, integrally(integral) is "...sufficient broad to embrace constructions united by such means as fastening and welding" - *In re Hotte (CCPA) 177 USPQ 326*; "...is not necessarily restricted to one-piece article" -*In re Kohno (CCPA) 157 USPQ 275*; and "...although they are not structurally integral, since wall and housing are rigidly secured and hence are integral in functional sense." -*In re Clark (CCPA)*

**102 USPQ 241.** Claim 13 includes integrally molded recitation and the case law discussed above applied thereto. Shibao clearly shows a fuel tank having an exterior shell (Figure 2) made of two tank portions 5 and 4. A pump 7 is entirely within the shell of the tank. Shibao disclose that the tank is made of made of molded plastic and that a compartment 1 (to which the pump is fixed) which includes a pump support 6 is integrally molded thereto (see column 3, lines 37+). The compartment shown in Figure 1 is held to the bottom wall and is clearly “integrally molded” with it. See case law above. Note resilient fingers 3a (see column 3, lines 3+) fasten the compartment to the tank bottom, rigidly secure it and “...hence are integral in functional sense.”. With regard to claim 9, note the elastic engagement pieces discussed in column 4, lines 52+. With regard to claim 14-16 note the snap fit elements 4a and 5a. With regard to applicants’ amendment to claims 1 to change integral to “one-piece” and arguments thereto, note the recitation of “integral” (previously recited)(now restricted as one-piece) is not necessarily limited to a one-piece article, fastening of the compartment of Shibao can be read as integral and thus can be read as one-piece as recited in claim 1. The compartment upon which the support is integrally molded is integrally molded to the bottom portion of the fuel tank and is one-piece. The bottom portion upon which a pump compartment is secured (i.e., integrally molded compartment has now been deleted by this amendment) is closed by the top portion of the fuel tank and would entirely “...locate the pump within the shell...defining the fuel tank. Applicant argues that the pump 7 of Shibao is not “...located entirely within the shell...”, however, applicants have redefined the invention by deleting the previously cited integrally molded compartment recitation. As discussed above the pump 7 would be inside a fuel tank define by two portions and is entirely within the shell defined by the two portions. The compartment as is

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standard in fuel tank design is molded to the bottom of the tank and is at "...the low point...".

The inlet of the pump 7 would allow the fuel to drop into the compartment 6. Contrary to applicants' remarks, and as discussed in detail in the final rejection, Shibao clearly shows a fuel tank having an exterior shell (Figure 2) made of two tank portions 3 and 4. A pump 7 includes a pumping portion in adjacent to support 6 entirely within the shell of the tank. Shaibo further shows a tank made of molded plastic. In their response filed December 8, 2004, applicants contradict themselves on page 7 and page 8, respectively, when they state that Shaibo does not teach "molded plastic material" construction and then state that compartment (4,5) and flange 4a are made from polyacetal resin. Shaibo clearly shows a compartment 10 (to which the filtered pump 7 is fixed) which includes a pump support 6 integrally molded thereto (column 3, lines 37+). The compartment 10 which includes the support 6, shown in Figure 1, is held to the bottom wall and is clearly integrally molded. As discussed in paragraph 7 of the final rejection, "integral" had been changed to "one piece", and as stated in the final rejection, because Shaibo can be read as integral and thus the compartment which includes the pump support 6 can be read as "one-piece" with respect to portion 4 of the shell forming the fuel tank. See the case law discussed in paragraph 3, in particular line 7 of the final rejection. As stated in the case law, integral is not necessarily restricted to one-piece article(s). Contrary to applicants' remarks it is not unclear how the elements of the patent to Shaibo are being applied to the claims. Applicants' arguments continue to be the same as those previous presently and discussed in detail above.

With regard to claims 32-34 the compartment housing the pump 7 of Shibao is clearly placed at the low point of the tank. Particular tanks structure is discussed in detail above. All standard fuel tank pumps such as that disclosed by include a filter. The integrally molded construction of the

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pump compartment is “single uniform whole” construction as recited (i.e., monolithic). An “amount of fuel” would remain in the compartment when the tank is empty.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

7. Claims 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shibao. Elements recited in claims 29 and 30 are common elements of a standard fuel system “pump

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assembly” and the “generic pump” 7 could include such elements. Such elements are not factors in the assembly of the molded tank. With regard to applicants’ amendment to claims 27 to change integral to “one-piece” and arguments thereto note integral (previously recited)(now recited as one-piece) is not necessarily limited to a one-piece article, fastening of the compartment of Shibao can be read as integral and thus can be read as one-piece as recited in claim 27. See discussion of tanks portions defining the fuel tank and the pump being entirely within the shell above. It would have been obvious to one of ordinary skill in the art to assemble the molded tank of Shibao by the recited method steps.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the patent to Minagawa et al in which a fuel system, including a “resiliently mounted pump”, regulator, a fuel gauge 140 (outside lower housing 126) , filter 124 and a check valve (in outlet pipe 132) , is shown.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. Michael Chambers whose telephone number is 571-272-4908. The examiner can normally be reached on Mon-Thur. 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Gene Mancene can be reached on 571-272-4930. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



A. Michael Chambers  
Primary Examiner  
Art Unit 3753

amc  
January 18, 2005